

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 04, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHEYANN L.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,

Defendant.

No. 4: 24-cv-05035-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Due to autism spectrum disorder, attention deficit hyperactivity disorder (ADHD), bipolar, anxiety, depression, post-traumatic stress disorder (PTSD), binge eating, restless leg syndrome, a bladder disorder, and obsessive-compulsive disorder (OCD), Plaintiff Cheyann L. claims that she is unable to work fulltime and applied for disability insurance benefits. She appeals the denial of benefits by the

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

Administrative Law Judge (ALJ) on the grounds that the ALJ erred by failing to fully develop the record, erred at step two in failing to fully properly evaluate Plaintiff's autism spectrum disorder and bladder disorder, improperly evaluated the opinions of the treating and examining medical sources, improperly assessed Plaintiff's testimony, and improperly assessed the lay testimony. She also argues that the Appeals Council erred in not remanding the case on the basis of evidence submitted after the hearing. As is explained below, the ALJ erred. This matter is remanded for further proceedings.

I. Background

In May 2021, Plaintiff filed an application for benefits under Title 2, claiming disability beginning April 19, 2021, based on the physical and mental impairments noted above.² Plaintiff's claim was denied at the initial and reconsideration levels.³ After the agency denied Plaintiff benefits, ALJ Caroline Siderius held a telephone hearing in June 2023, at which Plaintiff appeared without a representative.⁴ Plaintiff and a vocational expert testified.⁵ The ALJ

² AR 163, 197.

³ AR 91, 98.

⁴ AR 53-73.

⁵ *Id.*

1 advised Plaintiff that she had the right to an attorney but did not explain the fee
2 structure for representatives.⁶

3 Plaintiff testified that she was currently employed working two eight-hour
4 days per week at Solstice Senior Living and had been there since September 4,
5 2022.⁷ She said that she lived with her mother and that her 14 year old daughter
6 was with them about 50 percent of the time, and that she had obtained a
7 Bachelor's degree in business.⁸ Plaintiff said her job is a concierge, in which she
8 will help residents by bringing up deliveries and packages.⁹ She said she had
9 difficulty dealing with some of the residents because it can be busy and there are
10 expectations from residents and it is hard for her when there are multiple people
11 asking for help.¹⁰ Plaintiff said she is sensitive and has gotten better at
12 deescalating situations and working on calming herself but that she is easily
13 agitated and needs to take a lot of breaks.¹¹ When she is on a break, she goes to a
14 quiet place to calm herself.¹²

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16 ⁶ AR 57.

17 ⁷ AR 59.

18 ⁸ *Id.*

19 ⁹ AR 60.

20 ¹⁰ *Id.*

21 ¹¹ AR 60-61.

22 ¹² AR 61.

1 Plaintiff said that a couple of times she tried to work three days a week but
2 that by the third day she was crying and not able to get tasks done like she did the
3 first two days.¹³ Plaintiff said that because of her autism and her Tourette's
4 syndrome she will get overwhelmed and that her ticks get severe and she needs six
5 to eight hours of down time.¹⁴ She said that she also has an overactive bladder but
6 does not know why, and that her Tourette's causes physical ticks, including
7 stretching her arm, popping out her jaw, and pushing her fingernails into her
8 stomach.¹⁵

9 Plaintiff testified that in 2011 her father got her a job at Hanford as a janitor
10 and she was able to work full-time because he was providing her housing and
11 organized her daily routine.¹⁶ She was stable on medication after a couple of
12 mental breakdowns but then her father died and she was not able to function
13 without his help.¹⁷ When she was married, her husband provided the same support
14 and she was able to work full-time at the Department of Revenue but she required
15 multiple medications and gained 100 pounds.¹⁸ Plaintiff said that she has been
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17 ¹³ *Id.*

18 ¹⁴ *Id.*

19 ¹⁵ AR 61-62.

20 ¹⁶ AR 62.

21 ¹⁷ *Id.*

22 ¹⁸ AR 62-63.

1 seeing a counselor, Julie Wilde, since 2019, and she used to see her once every
2 three weeks but presently saw her once a month due to lack of insurance.¹⁹
3 Plaintiff said she was prescribed Adderall but was not taking it because she was
4 calmer without it.²⁰ She said that while at the Department of Revenue she worked
5 full-time for eight or nine months but then had to take leave under FMLA because
6 was mentally and physically ill.²¹ She said that when she got sick she would get a
7 sore throat and mentally be unable to show up for work or get out of bed for a
8 week.²² Plaintiff said that she had difficulty both with jobs that involved
9 interaction with others and jobs that did not.²³ She said that either type of job
10 caused an increase in her Tourette's symptoms because there was pressure to
11 follow direction and she thinks in literal terms which are difficult for bosses to
12 explain.²⁴

13 When asked if she could handle performing a basic job, Plaintiff said that
14 her work as a janitor at Handford was basic but that she was not able to handle it
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17 ¹⁹ AR 63.

18 ²⁰ *Id.*

19 ²¹ *Id.*

20 ²² *Id.*

21 ²³ AR 64.

22 ²⁴ *Id.*

1 for more than 20 hours a week without having a sensory overload.²⁵ She said that
2 when she has a sensory overload she would not be able to complete basic daily
3 activities such as showering and brushing her teeth.²⁶ When asked what she would
4 be overloaded with, Plaintiff answered that the ordinary stresses of life and that
5 she needs to decompress.²⁷ When the ALJ asked why she could not be calmed by
6 medication, Plaintiff explained that gene therapy, anti-depressants, and anti-
7 psychotics had not helped and that the only thing that helped was limiting her
8 hours to two days per week.²⁸ Plaintiff said that her job was fifty percent sitting
9 and forty percent moving around.²⁹

10 Plaintiff stated that she had tried different jobs and tried working for
11 different amounts of time, and that no matter what she tried, she needed down
12 time to compose herself or she could not function.³⁰ Plaintiff said that when
13 working for the Port Authority she was a cashier and customer service person but
14 had difficulty counting money.³¹ She said that when working in Department of
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16 ²⁵ *Id.*

17 ²⁶ AR 64-65.

18 ²⁷ AR 65.

19 ²⁸ *Id.*

20 ²⁹ *Id.*

21 ³⁰ AR 66.

22 ³¹ AR 67.

1 Revenue she would call and remind businesses to file forms or pay quarterly
2 taxes.³²

3 After the hearing, the ALJ issued a decision denying benefits.³³ The ALJ
4 found Plaintiff's alleged symptoms were not entirely consistent with the medical
5 evidence and the other evidence.³⁴ As to medical opinions, the ALJ found:

- 6 • The opinions of state agency evaluator Christine Harmon, MD, that
7 there was insufficient evidence to evaluate the claim to be not
8 persuasive.
- 9 • The opinions of state agency evaluator Jeffrey Merrill, MD, and
10 Matthew Comrie, PsyD, to be persuasive.
- 11 • The opinions of consultative examiner Diana Cook, PhD, to be
12 somewhat persuasive.
- 13 • The opinions of treating source Angela Hamel, DNP, ARNP, PMHNP-
14 BC, to be not persuasive.
- 15 • The opinions of treating source Julie Wilde, MA, LMHC, to be
16 unpersuasive.³⁵

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18 ³² *Id.*

19 ³³ AR 41-43. Per 20 C.F.R. § 404.1520(a)–(g), a five-step evaluation determines
20 whether a claimant is disabled.

21 ³⁴ AR 25-26.

22 ³⁵ AR 26-30.

1 The ALJ also found letters written by Plaintiff's mother, sister, former spouse and
2 coworker to be not consistent with the objective record.³⁶ As to the sequential
3 disability analysis, the ALJ found:

- 4 • Plaintiff meets the insured status requirements of the Social Security
5 Act through December 31, 2027.
- 6 • Step one: Plaintiff had not engaged in substantial gainful activity
7 since her alleged onset date of April 19, 2021.
- 8 • Step two: Plaintiff had the following medically determinable severe
9 impairments: bipolar disorder, anxiety disorder, and depressive
10 disorder. The ALJ also found that Plaintiff's obesity was not a severe
11 impairment and that autism spectrum disorder and bladder issues
12 were not medically determinable impairments.
- 13 • Step three: Plaintiff did not have an impairment or combination of
14 impairments that met or medically equaled the severity of one of the
15 listed impairments, including specifically Listing 12.04 and 12.06.
- 16 • RFC: Plaintiff had the RFC to perform a full range of work at all
17 exertional levels but with the following exceptions:
18 [Plaintiff is] able to maintain attention and concentration in two
19 hour increments; able to persist in a work-related activities that
20 are not production goal based or do not have a specific required
21 completion time; able to complete a work day and/or a work week
22 at a consistent pace and will not need an unreasonable number
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³⁶ AR 44.

of breaks (just ordinary breaks); occasional brief contact with general public and coworkers.

- Step four: Plaintiff is able to perform her past relevant work as a janitor.
- Step five: in the alternative, considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as a housekeeper cleaner (DOT 323.687-014), marker (DOT 209.587-034), and mail clerk (DOT 209.687-026).³⁷

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.³⁸

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"³⁹ and such error impacted the nondisability determination.⁴⁰ Substantial evidence is "more than a mere scintilla but less than a

³⁷ AR 35-46.

³⁸ AR 248.

³⁹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. § 405(g).

⁴⁰ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other grounds by* 20 C.F.R. § 404.1520(a) (recognizing that the court may not reverse an

1 preponderance; it is such relevant evidence as a reasonable mind might accept as
2 adequate to support a conclusion.”⁴¹

3 III. Analysis

4 Plaintiff seeks relief from the denial of disability on six grounds. She argues
5 the ALJ erred by failing to develop the medical record, when evaluating the
6 medical opinions; erred at Step Two by failing to find that Plaintiff’s autism
7 spectrum disorder was a severe impairment, erred when evaluating Plaintiff’s
8 testimony, and erred when evaluating the lay testimony. She also argues that the
9 Appeals Council erred by not remanding the case after evidence was submitted
10 post decision. The parties agree that the ALJ erred at Step Two in not finding
11 autism spectrum disorder to be a severe impairment but disagree whether the
12 error was consequential. As is explained below, the Court concludes that the ALJ’s

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15 ALJ decision due to a harmless error—one that “is inconsequential to the ultimate
16 nondisability determination”).

17 ⁴¹ *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
18 1997)). *See also Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
19 court “must consider the entire record as a whole, weighing both the evidence that
20 supports and the evidence that detracts from the Commissioner’s conclusion,” not
21 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,
22 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does
23 not indicate that such evidence was not considered[.]”).

1 error was consequential and tainted her evaluation of the medical opinions,
2 Plaintiff's testimony, and lay witness testimony. The Court also concludes that the
3 record requires development.

4 **A. Step Two: Plaintiff establishes consequential error.**

5 Plaintiff argues that the ALJ erred at step two by failing to find her autism
6 spectrum disorder to be a severe impairment.⁴² The Commissioner concedes that
7 the ALJ erred in finding that autism spectrum disorder was not a medically
8 determinable impairment but argues that the error was harmless because the ALJ
9 found that Plaintiff had the severe impairments of bipolar disorder, anxiety
10 disorder, and depressive disorder and considered the limitations from those
11 impairments through the remainder of the analysis.⁴³ The Court disagrees with the
12 Commissioner and finds that the ALJ's error was consequential.

13 1. Standard

14 At step two of the sequential process, the ALJ determines whether the
15 claimant suffers from a "severe" impairment, i.e., one that significantly limits her
16 physical or mental ability to do basic work activities.⁴⁴ This involves a two-step
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20 ⁴² ECF No. 6.

21 ⁴³ ECF No. 8.

22 ⁴⁴ 20 C.F.R. § 416.920(c).
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1 process: 1) determining whether the claimant has a medically determinable
2 impairment and 2), if so, determining whether the impairment is severe.⁴⁵

3 Neither a claimant's statement of symptoms, nor a diagnosis, nor a medical
4 opinion sufficiently establishes the existence of an impairment.⁴⁶ Rather, "a
5 physical or mental impairment must be established by objective medical evidence
6 from an acceptable medical source."⁴⁷ Evidence obtained from the "application of a
7 medically acceptable clinical diagnostic technique, such as evidence of reduced joint
8 motion, muscle spasm, sensory deficits, or motor disruption" is considered objective
9 medical evidence.⁴⁸ If the objective medical signs and laboratory findings
10 demonstrate the claimant has a medically determinable impairment,⁴⁹ the ALJ
11 must then determine whether that impairment is severe.⁵⁰

14 ⁴⁵ *Id.* § 416.920(a)(4)(ii).

15 ⁴⁶ *Id.* § 416.921.

16 ⁴⁷ *Id.*

17 ⁴⁸ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence (2019).

18 *See also* 20 C.F.R. § 416.913(a)(1).

19 ⁴⁹ "Signs means one or more anatomical, physiological, or psychological
20 abnormalities that can be observed, apart from [a claimant's] statements
21 (symptoms)." 20 C.F.R. § 416.902(l).

22 ⁵⁰ *See* Soc. Sec. Ruling (SSR) 85-28 at *3 (1985).

1 The severity determination is discussed in terms of what is *not* severe.⁵¹ A
 2 medically determinable impairment is not severe if the “medical evidence
 3 establishes only a slight abnormality or a combination of slight abnormalities
 4 which would have no more than a minimal effect on an individual’s ability to
 5 work.”⁵² Because step two is simply to screen out weak claims,⁵³ “[g]reat care
 6 should be exercised in applying the not severe impairment concept.”⁵⁴

7 2. The ALJ’s Findings

8 When considering impairments at step two, the ALJ found that Plaintiff
 9 suffered from the severe impairments of bipolar disorder, anxiety disorder, and
 10 depressive disorder.⁵⁵ She then stated that autism spectrum disorder was not a
 11 medically determinable impairment, and articulated the following reasoning:

12 A thorough review of the record shows insufficient evidence of autism
 13 spectrum disorder (see 10F, 22E). The claimant’s psychiatric nurse
 14 practitioner submitted a letter stating the claimant’s atypical
 15 behaviors are consistent with autism spectrum disorder level 1 (10F).
 However, aside from a diagnosis, treatment notes document no
 objective medical evidence supporting this condition. Therefore, this
 impairment is not a medically determinable impairment.⁵⁶

17 ⁵¹ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

18 ⁵² *Id.*; see SSR 85-28 at *3.

19 ⁵³ *Smolen*, 80 F.3d at 1290.

20 ⁵⁴ SSR 85-28 at *4.

21 ⁵⁵ AR 36.

22 ⁵⁶ *Id.*

1 3. Relevant Medical Records

2 Because the Court is considering the ALJ's evaluation of autism spectrum
3 disorder, only those medical records which are relevant will be included.

4 *a. Dr. Cook*

5 On March 23, 2022, Plaintiff was examined by consultative examiner Diana
6 Cook, PhD, at the request of the Commissioner.⁵⁷ Plaintiff reported that she had
7 been diagnosed with autism two months prior and had been diagnosed with bipolar
8 and major depressive disorder at age 10.⁵⁸ Plaintiff was tearful on presentation and
9 stated that she cannot keep a job due to anxiety, and that her depression was not
10 severe until her father's death 10 years prior.⁵⁹ Plaintiff reported that after her
11 recent diagnosis with autism her medications were stopped until a new treatment
12 plan was formulated.⁶⁰ Plaintiff reported that she continued to see a therapist once
13 a month.⁶¹

14 Plaintiff reported that she was married for 9 years but separated in
15 November 2021, and still saw her ex-husband and step-daughter.⁶² Plaintiff

17 ⁵⁷ AR 488-492.

18 ⁵⁸ AR 488.

19 ⁵⁹ *Id.*

20 ⁶⁰ *Id.*

21 ⁶¹ *Id.*

22 ⁶² AR 489.

1 reported that she lost her last job in December and lost a job prior to that in March
2 2021, and that she was let go because she was slow and could not understand
3 directions.⁶³ Plaintiff reported that she worked for the Department of Revenue for
4 three years and had an abusive boss, and that she worked as a janitor for five years
5 prior to her father's death.⁶⁴ Plaintiff reported that she does not use alcohol or
6 substances.⁶⁵ Plaintiff reported rapid cycles between mania and depression.⁶⁶

7 On mental status examination, Plaintiff presented with good grooming; was
8 polite and cooperative but had nervous fidgeting with her hands; had normal
9 speech; denied suicidal plan but endorsed suicidal ideation since high school; stated
10 her mood was good and had congruent affect; was oriented; had normal memory,
11 concentration, attention and fund of knowledge; was able to think abstractly; and
12 had impaired judgment and insight.⁶⁷

13 Dr. Cook diagnosed bipolar disorder and autism.⁶⁸ Dr. Cook states that
14 Plaintiff functions well in her home and seemed genuine in her description of her
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17 ⁶³ *Id.*

18 ⁶⁴ *Id.*

19 ⁶⁵ *Id.*

20 ⁶⁶ AR 490.

21 ⁶⁷ AR 490-491.

22 ⁶⁸ AR 491.

1 struggle in the workplace and rapid cycling.⁶⁹ Dr. Cook opined that Plaintiff would
2 be unimpaired in the following tasks: perform simple and repetitive tasks, and
3 perform detailed and complex tasks.⁷⁰ She opined that Plaintiff would have
4 difficulty with the following tasks: accepting instructions from supervisors;
5 interacting with coworkers and the public; and completing a normal work day or
6 work week without interruption from symptoms.⁷¹ She opined Plaintiff would have
7 a marked difficulty in completing the following tasks: performing work activities on
8 a consistent basis without special or additional instruction; maintaining regular
9 attendance; and dealing with the usual stress encountered in the workplace.⁷²

10 *b. Dr. Hamel*

11 On June 7, 2022, Plaintiff presented to Angela Hamel, DNP, ARNP⁷³, on the
12 referral of Kade Sharp for assessment of autism and ADHD, as well as medication
13 management.⁷⁴ Plaintiff reported prior trials of Trazadone, Lamotrigine,
14 Ropinirole, Wellbutrin, Cymbalta and Effexor, with report that the last two caused

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16 ⁶⁹ *Id.*

17 ⁷⁰ AR 491-492.

18 ⁷¹ *Id.*

19 ⁷² *Id.*

20 ⁷³ Angela Hamel holds a doctorate in nursing practice, and her proper title is
21 Dr. Hamel.

22 ⁷⁴ AR 588.

1 suicidal ideation and a 100-pound weight gain.⁷⁵ Plaintiff reported that she was
2 working 20 hours per week but could not hold down a full-time job, does not feel
3 functional, has difficulty interacting with others, had difficulty maintaining
4 attention and communicating with others, and struggled to regulate her
5 emotions.⁷⁶ Dr. Hamel noted that Plaintiff's development was delayed with delayed
6 speech, additional needs for assistance in personal care, lack of coordination as a
7 child, and a struggle to write legibly.⁷⁷ Dr. Hamel noted that Plaintiff had a
8 master's degree and no history of special education.⁷⁸ Plaintiff reported a history of
9 brief employment with one long term job as a janitor.⁷⁹ On mental status
10 examination Plaintiff was cooperative and engaged but tearful, had normal mood
11 and affect, intermittent eye contact, coherent thought process, and normal
12 memory, coordination, insight, and judgment.⁸⁰ She had no perceptual
13 disturbances or delusions, and was oriented in all spheres.⁸¹

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16 ⁷⁵ *Id.*

17 ⁷⁶ *Id.*

18 ⁷⁷ AR 589.

19 ⁷⁸ *Id.*

20 ⁷⁹ AR 590.

21 ⁸⁰ AR 591.

22 ⁸¹ *Id.*

1 Dr. Hamel evaluated Plaintiff for autism.⁸² Dr. Hamel noted mental status
2 findings within normal limits; a history of developmental delay and lack of
3 coordination.⁸³ Dr. Hamel noted no physical symptoms.⁸⁴ As to psychiatric
4 conditions, Dr. Hamel noted the following: depression since age 9 which manifests
5 as feeling down, guilt, trouble concentrating, insomnia, and fatigue; no manic
6 symptoms; daily anxiety since age 9 manifesting as worrying, becoming easily
7 annoyed and feeling fearful; weekly panic attacks characterized by shortness of
8 breath, chest pain, sweating, and crying; obsessions over routine and a “bad mood”
9 if it is interrupted; trouble concentrating; a history of suicidal ideation but no
10 present plan following recent treatment; insomnia and restless leg syndrome
11 resulting in 4-6 hours of sleep a night; and binge eating as emotional coping tool.⁸⁵
12 Dr. Hamel noted that on the Autism Spectrum Quotient (AQ) scores in the 35-50
13 range indicate significant autistic traits and Plaintiff scored 36 out of 50.⁸⁶ Dr.
14 Hamel stated that based on history and observed behaviors Plaintiff has
15 impairments in the criteria of social communication and social interaction with
16 deficits in two of the three functional areas and deemed the severity Level 1,

18 ⁸² AR 593.

19 ⁸³ *Id.*

20 ⁸⁴ AR 595.

21 ⁸⁵ AR 595-596.

22 ⁸⁶ AR 596.

1 requiring support.⁸⁷ She had deficits in the following areas: nonverbal
2 communicative behaviors; and developing, maintaining, and understanding
3 relationships.⁸⁸ With regard to restricted or repetitive patterns of behavior and
4 interests, Plaintiff met the criteria in three of four functional areas, and had a
5 severity Level 1, requiring support.⁸⁹ She had deficits in the following areas:
6 inflexible routines or adherence to ritualized patterns; highly restricted, fixated
7 interests that are abnormal in intensity or focus; and hyperreactivity to sensory
8 input.⁹⁰ Plaintiff met the criteria for symptoms being present in the early
9 development period and also met the criteria for symptoms causing significant
10 impairment in social or occupational functioning.⁹¹ Lastly, Dr. Hamel found that
11 Plaintiff's symptoms were not better explained by a different diagnosis.⁹² Based on
12 the examination, Dr. Hamel diagnosed Plaintiff with Autism Spectrum Disorder
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17 ⁸⁷ AR 597.

18 ⁸⁸ *Id.*

19 ⁸⁹ *Id.*

20 ⁹⁰ *Id.*

21 ⁹¹ *Id.*

22 ⁹² *Id.*

1 and Attention Deficit Hyperactivity Disorder.⁹³ Dr. Hamel recommended treatment
2 with Adderall and noted that Plaintiff was seeing a counselor regularly.⁹⁴

3 On June 21, 2022, Dr. Hamel wrote a narrative letter titled “RE: Diagnosis
4 of Autistic Disorder” and addressed “To Whom it May Concern.”⁹⁵ The letter
5 stated:

6 [Plaintiff] was evaluated on 06/07/2022 at Columbia Basin Psychiatric
7 Solutions by Angela Hamel, DNP, ARNP, PMHNP-BC. [Plaintiff]
8 demonstrates impairments in social interaction, social communication,
9 and atypical behavior consistent with Autism Spectrum Disorder, Level
10 #1 (DSM-5 code 299.00, ICD. 10 code F84.0). [Plaintiff’s] behaviors and
11 skill deficits have had an adverse impact on her development and social
12 communication. [Plaintiff] has some functional impairment, as
13 documented on 06/07/2022, that occasionally interfere with her ability
14 to participate adequately in home, school, and other community
15 environments. The findings of this evaluation were also consistent with
16 Attention Deficit Hyperactivity Disorder, combined type (ICD. 10 code
17 F90.2).⁹⁶

18 *c. LMHC Wilde*

19 On April 16, 2023, wrote a narrative letter stating that she had been
20 working with Plaintiff in individual therapy since June 2019.⁹⁷ LMHC Wilde wrote
21 that Plaintiff presented for counseling with symptoms of irritation, anxiety, and
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23 ⁹³ AR 592.

⁹⁴ *Id.*

⁹⁵ AR 493.

⁹⁶ *Id.*

⁹⁷ AR 586.

1 mood instability, and stated that Plaintiff had been consistent and motivated in
 2 attending therapy.⁹⁸ LMHC Wilde wrote that it was evident from treatment that
 3 Plaintiff experiences episodes of increased depression, anxiety, mood instability,
 4 and difficulty with emotional regulation.⁹⁹ She noted that Plaintiff's condition had
 5 improved but that she still experienced exacerbations and that when she did she
 6 struggled with self-care and activities of daily living.¹⁰⁰ LMHC Wilde notes that
 7 Plaintiff's exacerbations had affected her ability to hold employment and her
 8 condition had been more stable since starting part-time employment.¹⁰¹

9 4. Analysis

10 The Commissioner conceded that the ALJ erred in failing to find that
 11 Plaintiff's autism spectrum disorder was a severe impairment and stated:

12 The Commissioner concedes that this finding was in error, as Ms.
 13 Hamel completed an evaluation and administered the Autism
 14 Spectrum Quotient (AQ). Tr. 596. Results of that test indicated
 15 significant autistic traits. Tr. 596. However, despite not identifying
 16 this or ADHD as severe impairments at step two, any error would be
 17 harmless.¹⁰²

18 ⁹⁸ *Id.*

19 ⁹⁹ *Id.*

20 ¹⁰⁰ *Id.*

21 ¹⁰¹ *Id.*

22 ¹⁰² ECF No. 8, pg. 8.

1 Plaintiff argued in her reply brief that the ALJ's error was consequential
 2 because despite the fact that the ALJ found Plaintiff suffered from bipolar,
 3 depression, and anxiety, an evaluation of those impairments would not properly
 4 consider Plaintiff's limitations in working full-time without becoming overloaded or
 5 overwhelmed.¹⁰³

6 Plaintiff is correct that the limitations which one would expect from autism
 7 spectrum disorder are distinctly different than those one would expect from bipolar
 8 disorder, depression, and anxiety. Plaintiff was diagnosed by Dr. Hamel with
 9 Level 1 autism spectrum disorder, a diagnosis which inherently indicates that the
 10 individual diagnosed is "requiring support" services, and that without supportive
 11 services in place symptoms are expected to cause noticeable impairments.¹⁰⁴

12 It was the testimony of Plaintiff that she was capable of working full-time
 13 during her employment because her father provided her with substantial
 14 supportive services.¹⁰⁵ She stated that her father organized everything for her
 15 prior to his illness.¹⁰⁶ Plaintiff testified that even the simple work as a janitor at
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17 ¹⁰³ ECF No. 9.

18 ¹⁰⁴ AR 493. American Psychiatric Association. (2022). *Diagnostic and statistical*
 19 *manual of mental disorders*, Code 299.00. (5th ed., text rev.).

20 <https://doi.org/10.1176/appi.books.9780890425787>.

21 ¹⁰⁵ AR 62.

22 ¹⁰⁶ *Id.*

1 Hanford would at times result in sensory overload but that she was able to
2 decompress because her father provided support in her daily activities of living.¹⁰⁷
3 She testified that when her father died she was not able to function without his
4 help.¹⁰⁸ Notably, Plaintiff testified that during the only other time that she was
5 able to sustain full-time work, her then-husband provided similar support.¹⁰⁹

6 While Plaintiff did not use the term “sensory overload” in her testimony, her
7 description of her difficulty is consistent with sensory overload experienced as a
8 result of autism. The following exchange took place on the record:

9 Pl: So, my job at Department of Revenue I was doing that. I lasted
10 about, almost eight to nine months doing full 40 hours. And, I had
11 to get FMLA. And, I would run it out. Because, I would, I would
12 need time off. I would need, you know, downtime. I would get
13 mentally ill. I'd get physically ill. I'd get a sore throat. I'd get --
14 I'd just have a mental breakdown. I would not be able to show up
15 for work the next day. And then, I'd be in bed for a week. And, it
16 just -- it's, like, it, it makes me mentally and physically ill.

17 ALJ: Is it because of the interaction with people or is it physically?

18 Pl: I think it's both. I think it's both, because I've had both - like,
19 human interaction jobs and human interaction jobs. And, I think
20 they just both cause me to have to, you know, I find my Tourette's
21 where I push on my stomach or pop my jaw or put up my arms or
22 flail or, like, bend or. You know, do any of these things that I can
23 make feel better. And, they're -- and, it's just a lot of pressure, you
know, the expectations. But, I don't really understand directions
very well. I'm very literal. And, I've not had very many bosses that

¹⁰⁷ AR 64-65.

¹⁰⁸ AR 61-62.

¹⁰⁹ AR 62-63.

1 wouldn't, you know, be really easy or have them type (PHONETIC)
2 instructions for me when I don't understand those.

3 ALJ: So, what if you had a job that was pretty basic. I mean, you're
4 just doing simple things and you're not working around people or
5 with the public. If you're not having that kind of information
6 overload, why couldn't you do a job like that?

7 Pl: That's what I did, actually, at Hanford. I was a janitor. And,
8 it was okay for 20 hours. And then I would just get overloaded on
9 the, the other days where I - you know, you still got to show up.
10 You still got to get your work done. You still got to, you still got to,
11 like, get -my thing is, like, I, I can no longer brush my teeth. I can't
12 shower. I'll just go a week at time without bathing. And, it's, like,
13 I get so overload I can't take care of myself anymore.

14 ALJ: And overloaded with what?

15 Pl: Just, like, like, life. You know what I mean. I want to just go do
16 my dishes. I have to still do my laundry. I have to still take care of
17 myself and my room and everything. It's, like, I don't have enough
18 hours in the day to relax and be composed and decompress.¹¹⁰

19 Plaintiff's testimony was consistent with an individual experiencing "sensory
20 overload" when not provided supportive services. It was consistent with her
21 diagnosis of autism spectrum disorder, Level 1.

22 Because the ALJ failed to consider the diagnosis of autism spectrum
23 disorder, she failed to consider what supportive services were necessary. The
ALJ's formulated RFC does not contain any provision for supportive services.

¹¹⁰ AR 63-65.

1 Although step-two errors are often harmless,¹¹¹ and the Commissioner
2 argues that any error here was harmless because the ALJ considered Plaintiff's
3 other mental impairments later in the sequential evaluation, the record does not
4 support that conclusion. Here, the ALJ's step-two error was not harmless. The
5 ALJ did not consider Plaintiff's need for supportive services caused by her autism
6 during the later sequential steps.¹¹²

7 The Court cannot be certain that the step-two error was not prejudicial at
8 the later steps. The Court concludes that the case should be remanded and the
9 ALJ should be directed to develop the record as to Plaintiff's autism spectrum
10 disorder.

11 **B. Plaintiff's other arguments as to ALJ error: issues to be**
12 **reconsidered on remand.**

13 As noted above, the ALJ's failure to consider Plaintiff's autism spectrum
14 disorder tainted the ALJ's consideration of the medical opinions, Plaintiff's
15
16

17 ¹¹¹ See *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006);
18 *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005).

19 ¹¹² See *Burch* 400 F.3d at 2 682 ("Assuming without deciding that this omission
20 constituted legal error [at step two], it could only have prejudiced Burch in step
21 three (listing impairment determination) or step five (RFC) because the other
22 steps, including this one, were resolved in her favor.").

1 testimony, and the statements made by third parties.¹¹³ Because the Court has
 2 remanded the case for consideration of the record as a whole, the ALJ will be
 3 required to consider the medical opinions, the third-party testimony, and the
 4 credibility of Plaintiff's subjective complaints.

5 **C. Appeals Council Error: This issue is moot.**

6 Because the Court has concluded that remand is warranted to address the
 7 ALJ's errors, this issue is moot.

8 **D. Remand for Further Proceedings**

9 Plaintiff submits a remand for payment of benefits is warranted. The
 10 decision whether to remand a case for additional evidence, or simply to award
 11 benefits, is within the discretion of the court."¹¹⁴ When the court reverses an ALJ's
 12 decision for error, the court "ordinarily must remand to the agency for further
 13 proceedings."¹¹⁵

15 ¹¹³ An ALJ must consider and articulate how persuasive she found each medical
 16 opinion, including whether the medical opinion was consistent with and supported
 17 by the record. 20 C.F.R. §§ 404,1520c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792
 18 (9th Cir. 2022).

19 ¹¹⁴ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
 20 761 F.2d 530 (9th Cir. 1985)).

21 ¹¹⁵ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
 22 ("[T]he proper course, except in rare circumstances, is to remand to the agency for
 23

1 The Court finds that further development is necessary for a proper disability
 2 determination. Here, it is not clear what, if any, additional limitations are to be
 3 added to the RFC. Therefore, the ALJ should properly consider the effects of all
 4 Plaintiff's medically determinable and severe impairments, reevaluate the opinion
 5 evidence, and make findings at each of the five steps of the sequential evaluation
 6 process.

7 IV. Conclusion

8 Accordingly, **IT IS HEREBY ORDERED:**

- 9 1. The ALJ's nondisability decision is **REVERSED**, and this matter is
 10 **REMANDED** to the Commissioner of Social Security for further
 11 proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
- 12 2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 6 and 8**,
 13 enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

14 IT IS SO ORDERED. The Clerk's Office is directed to file this order and
 15 provide copies to all counsel.

16 DATED this 4th day of September, 2024.

17 

18 EDWARD F. SHEA
 19 Senior United States District Judge

20 _____
 21 additional investigation or explanation"); *Treichler v. Comm'r of Soc. Sec. Admin.*,
 22 775 F.3d 1090, 1099 (9th Cir. 2014).
 23